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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,051	02/12/2002	Wei Wang	02453.0003.CNUS01	8564
27194	7590	11/22/2006	EXAMINER BAYARD, DJENANE M	
HOWREY LLP C/O IP DOCKETING DEPARTMENT 2941 FAIRVIEW PARK DRIVE, SUITE 200 FALLS CHURCH, VA 22042-2924			ART UNIT 2141	PAPER NUMBER

DATE MAILED: 11/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/075,051	WANG ET AL.	
	Examiner	Art Unit	
	Djenane M. Bayard	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12 September 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-4 and 20-22 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-4 and 20-22 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application

6) Other: _____

DETAILED ACTION

1. This is in response to amendment filed on 9/12/06 in which claims 1-4 and 20-22 are pending.

Response to Arguments

2. Applicant's arguments have been fully considered but they are not persuasive.

As per claims 1 and 20, Applicant argues that Jindal fails to disclose a "persistent policy". However, Jindal clearly teaches "wherein after a preferred server is identified, the central server's look-up table is updated with an identifier of the preferred server and subsequent request for the application or replicated service are directed to that server" (See col. 5, lines 35-40). Jindal clearly teaches "a persistence policy" since the client request is force to the server that handled the last request from the same client. In response to applicant's argument, that the lookup table of the Jindal patent changed depending upon the load-balancing policy on a periodic or regular basis, Jindal clearly teaches wherein the special object structure is constructed to apply the selected load balancing policy only if the it is determined the instructions or executable code for the specialized object that will determine a preferred server does not already exist (See col. 12, lines 13-23). Furthermore, Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As per claim 2, Applicant argues that Jindal fails to teach "wherein the first logic determines if a persistence policy is applicable to a service request having and originator through consideration of whether or not allocation exists or recently expired for the originator the service

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request". However, Jindal clearly teaches wherein "the configuration of the status objects (..the data they collect) depends upon the policy that has been selected for choosing a preferred server (See col. 7, lines 58-60). IMO is an individual monitor object that collects information of the status objects (See col. 8, lines 27-29). Furthermore, Jindal clearly teaches wherein the special object structure is constructed to apply the selected load balancing policy only if the it is determined the instructions or executable code for the specialized object that will determine a preferred server does not already exist (See col. 12, lines 13-23).

As per claims 3 and 21, Jindal clearly teaches wherein the special object structure is constructed to apply the selected load balancing policy only if the it is determined the instructions or executable code for the specialized object that will determine a preferred server does not already exist (See col. 12, lines 13-23, col. 9, lines 6-58).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4 and 20-22 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,327,622 to Jindal et al.

a. As per claims 1 and 20, Jindal et al teaches a system for applying a persistence policy to override allocation of a resource based on application of a load balancing policy comprising: first logic for determining if a persistence policy is applicable to a service request and, if so, allocating a resource to the request based on application of the persistence policy (See col. 5, lines 35-40, *after the preferred server is identified... subsequent request for the application or replicated service is directed to that server*); furthermore, Jindal et al teaches a second logic for allocating a resource to the request based on application of a load balancing policy if the persistence policy is determined to be inapplicable as determined by the first logic (See col. 6, lines 35-56, *the server identified in look-up table may be determined according to the load-balancing policy* and col. 12, lines 13-24)..

b. As per claim 2, Jindal et al teaches the claimed invention as described above. Furthermore, Jindal et al teaches wherein the first logic determines if a persistence policy is applicable to a service request having an originator through consideration of whether or not an allocation exists or recently expired for the originator the service request (See col. 11, lines 55-67).

c. As per claims 3 and 21, Jindal et al teaches the claimed invention as described above. Furthermore, Jindal et al teaches a system for allocating a resource to a resource request having an originator based on application of a persistence policy comprising: first logic for determining whether an allocation exists or recently expired for the originator of the resource request, and, if

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so, identifying the resource which is the subject of the existing or recently expired allocation (See col. 9, lines 6-58); and second logic for allocating the resource, once identified, to the resource request (See 6, lines 35-45).

d. As per claims 4 and 22, Jindal et al teaches the claimed invention as described above. Furthermore, Jindal et al teaches wherein the resource request is derived from or represented by a packet (See col. 2, lines 47-67, *It is inherent to one with ordinary skill in the art at the time of the invention that the resource request is represented by packet*).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Djenane M. Bayard whose telephone number is (571) 272-3878. The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Djenane Bayard

Patent Examiner



RUPAL DHARIA
SUPERVISORY PATENT EXAMINER